

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

JERMAINE MOORE

PETITIONER

VS.

CIVIL ACTION NO. 3:05CV347LN

**WARDEN DWIGHT PRESTLEY
and JIM HOOD**

RESPONDENTS

ORDER

This matter came before the court on the Petitioner's Motion to Set Reasonable Bond Pending Habeas Corpus Review, i.e., Appeal Bond. The basis for the Petitioner's request is the language of Fed. R. App. Proc. 7, 8 and 9, which indicate that a bond may be set in cases on appeal from a federal district court to a federal appellate court.¹ They do not apply to this case, because it is not on appeal. Habeas corpus is a civil proceeding that is a collateral attack on a criminal proceeding that originates in the district court. Thus, it is not covered by the appellate rules.

In any event, Rules 7 and 8 relate to civil proceedings, and neither refers to a release from custody. Rule 9 deals with the release from custody of a prisoner who was convicted in federal district court, not in state court. The cases cited by the Respondents involve persons in federal custody, not state custody. Thus, there is no evidence before the court, and the court is aware of none, that would authorize this court to set bond permitting the release of a prisoner in state custody.

IT IS, THEREFORE, ORDERED that the Petitioner's Motion to Set Reasonable Bond Pending Habeas Corpus Review, i.e., Appeal Bond is hereby **denied**.

¹Rule 1(a)(1) states, "These rules govern procedure in the United States courts of appeals.

IT IS SO ORDERED, this the 3rd day of April, 2006.

S/James C. Sumner

UNITED STATES MAGISTRATE JUDGE